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# THOUGHTS

England - Parliament [Bills - App. -  
Canada.]

ON THE

## CANADA BILL,

bill read 7 March 1791

NOW DEPENDING IN

## PARLIAMENT.

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L O N D O N :

PRINTED FOR J. DEBRETT, PICCADILLY.

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## THOUGHTS, &c.

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**A**T a period like the present, when the principles of liberty are so generally understood, and its claims so strongly felt ; a measure which has for its object the giving of a Constitution to a distant Province of the British Empire, must necessarily be contemplated as involving the most extensive and interesting consequences. On the wisdom and sufficiency of its provisions depends the welfare of the Province. On

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the liberality of its principle in some degree depends the character of the State. The Minister who introduced this measure for the consideration of Parliament, has in terms the most explicit recognized its importance, and with distinguished candor courted the most minute discussion of it. To him therefore we cannot impute the want of that attention which is due to the magnitude of its object, however we may differ with him in opinion as to the soundness of the principle upon which the Bill proceeds, or as to the sufficiency of the means which it provides for the attainment of such object. But whilst we admit the candor of the authors of the Bill, we feel ourselves bound to acknowledge with gratitude that timely interposition, which has obstructed the progress of a measure in our opinion so exceptionable in its principle, and so seriously mischievous in its detail.



It is not our intention to enumerate the grievances which this unfortunate Province has laboured under for upwards of twenty years ; neither shall we attempt to draw any argument in support of its claims, from the meekness and forbearance with which it has endured them ; but shall solely rely on that principle of reason and justice, recognized by our Constitution, which entitles *every dependent part of the British Empire to as large a portion of happiness, and to as ample security for its enjoyment, as the circumstances and situation of such part will permit.* Protesting against every conclusion drawn from practice, however general, which breaks in upon this fundamental right, we shall rest upon it in full confidence that bad precedents will not be allowed to operate as sound principles, or mistaken or merely temporary policy to be drawn out and applied as approved and established system.

To improve and secure the happiness of mankind, is the most distinguished privilege of Legislation, and is certainly that to which the British Legislature is the most attached: from the British Legislature, therefore, the Province of Quebec has every thing to hope. It need not resort to auxiliary arguments: it need not refer to the royal assurance afforded by His Majesty's Proclamation of 1763; *but, stating itself to be a part of the British Empire, it may confidently bring forward its claims to the enjoyment of British rights.*

Whether the Bill now depending does extend to the Province of Quebec the secure enjoyment of British rights, is the question to which we propose to address ourselves with that respect which is due to the opinions of those who have sanctioned the Bill with their approbation, and with that frankness

ness which is due to the importance of the measure. For it is a circumstance which must deeply affect the mind of every man, that if the measure be in its principle defective, it is a defect which hereafter the British Legislature will not have *a right* to correct : if its provisions are insufficient, it is an insufficiency which the British Legislature will not hereafter have *a right* to supply.

The Bill begins with referring to the Quebec Act passed in the fourteenth year of His present Majesty's reign, which it observes is "in *many* respects inapplicable "to the present condition and circumstances of the Province."

The most striking features of the Bill of 1774 are, the introduction of the laws of Canada, and the appointment of a Legislative Council for the affairs of the Province. From both these sources many grievances have

have certainly flowed. But the Bill now depending repeals only that part of the Bill of 1774 which appoints a Legislative Council; from which it might be inferred, that the Bill of 1774 has proved in *many* respects inapplicable to the condition and circumstances of the said Province, merely from *its appointment* of the Legislative Council thereby established. This Council was by the Bill invested with full powers to legislate for the Province, with the single exception of imposing taxes. It is not therefore unreasonable to conclude, that those powers have either not been exercised with sufficient judgment or with sufficient authority. If a want of judgment were imputable, a new choice of Councillors might have supplied it; if a want of authority, the establishing of an House of Assembly might have afforded it: nothing was more easy than to trace the evil, if it proceeded

proceeded from either of these causes ; nothing more obvious than the remedy.

The words *in many respects* must therefore be considered as having been inserted in the preamble of the Bill without reference to its provisions ; as they encourage the hope that the Bill would arrange what indeed is in many respects inapplicable to the condition of the Province, namely, the supposed Canadian laws, which on the contrary are by the Bill confirmed.

The Bill next proceeds to state, that His Majesty had been pleased to signify, by his message to both Houses of Parliament, his royal intention to divide his Province of Quebec into two separate provinces—to be called the Province of Upper Canada, and the Province of Lower Canada.

The division of the Province can operate no very great inconvenience, unless it be sanctioned by the approbation of Parliament ;  
and



and its expediency seems by the royal message to be submitted to the judgment of Parliament.

Many considerations seem to oppose the measure ; and none has yet been stated of sufficient force to justify it. It may be true that the new subjects are influenced, on many occasions, by very different motives from those which regulate the opinions and conduct of the ancient subjects. But it has not yet been said, or even insinuated, that those motives are so respectable as to give to the new subjects claims on the British Legislature which ought to be preferred to the claims of the ancient subjects. The prejudices (as they are termed) of the new subjects have indeed never been examined by the British Parliament. They may be deserving of a different appellation ; they may be opinions honourable to the individual, and useful to the State :



State : but till found to be so, they must be treated as prejudices which sound policy would endeavour to abate, or, if possible, to remove. The society of persons entertaining opposite opinions must gradually destroy such as are merely indifferent, and weaken the influence even of the most exceptionable. And the history of mankind will justify the policy of attempting to assimilate the manners and opinions of persons connected not more closely by situation, than by a common interest. But to divide a country for the purpose of uniting the people; to give new power to prejudice, and to furnish it with new opportunities of indulgence, with a view to weaken its force or to abate its virulence, is a policy as new as it is extraordinary : it is a policy which is contradicted by the principles and good effects of the Union of England and Scotland ; and by the whole history of Europe,

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which has been rescued from the horrors of a constant warfare by extending the social influence by every possible contrivance, and by giving to persons of the most opposite opinions that interest which might incline them to such mutual sacrifices as were necessary for their common happiness. The great extent of the Province, if it were well populated, might perhaps render some arrangement necessary to its general interest : but, even under such circumstances, some respect would still be due to local situation, as well as to local prejudice. It might be necessary to consult the latter ; but it certainly would be unpardonable to overlook the former : and if, upon surveying the situation of the Province, it were found that only a particular part of it allowed of the unmolested enjoyment of commerce ; such circumstance would probably weigh, even under the most pressing

pressing occasions, as an insurmountable obstacle to any division of the Province. It might be reasonably urged, that by such division the whole trade of the Province would be thrown into the possession of a single part of it; and the other parts left at the mercy of a discretion that might be actuated by indifference which might neglect, prejudice which might despise, or a separate interest which might control, their claims. But it has not yet been assigned, in justification of the measure of dividing the Province, that it is so well populated as to render a division necessary; nor that its interests are so harmonised, as to render such division at least harmless. On the contrary, the friends of the measure admit that the Province is not populated, and that its interests are distracted by prejudice. Under such circumstances, that a division should be planned by which one

part of the Province, having no direct communication with the sea, must be left at the mercy of the other, is, in our opinion, one of those unaccountable schemes which nothing but the wildness of imagination could suggest, or credulity adopt. That the British Legislature, with the map of Canada for its guide, should force the Upper Province to draw its supplies from Great Britain, through a country whose prejudices and interest may incline her to charge such supplies with heavy duties, is hardly credible: but that they should subject the surplus produce of the Upper Province, from which alone this country is to be benefited by the possession of that, to all the charges and obstacles which a rivalry in trade or unfounded prejudice may expose it, is a consequence of the Bill which no man will credit who has not previously consulted the proposed plan of division, and found that the Upper Province will

will thereby be excluded from all communication with the sea, unless by the concurrence of the Lower Province.

We mean not to deny the indulgence due to the prejudices of a people, but we think more respect is due to their interests. To wean them from the former, and to attach them to the latter, may perhaps be difficult; but it may be effected by degrees. We submit, however, that even the indulgence due to prejudice has its bounds; for, if prejudice endangers the rights of third persons, the indulgence of it becomes criminal. There may be persons in the Lower Province who entertain prejudices (we mean not to admit that there are) hostile to their own interests; and so far as their interests only are concerned, those prejudices may be more or less favoured. But if such prejudices threaten the interests of others, we submit that they ought not to be  
armed



armed with powers which may render such prejudices too active and effective. Good policy would endeavour to weed them out. The most profligate would hardly endeavour to give them a deeper root and greater strength. The Bill seems to proceed upon the existence of prejudices. They ought to be well considered, that Parliament may be able to determine the quality and extent of their tendency. If they can be softened down, and the whole people be assimilated in manners and general opinion, their united energies will certainly promote the interests of the Province and of all its connections; for, from the principle of such an union, their wants and resources will be quickly understood, and their best interests pursued by the best and most effectual means. But from the principle of division separate interests must arise; and the opportunity of prosecuting separate interests is furnished

furnished by the Bill. A state of continued dissension, if not of warfare, may be reasonably apprehended; and the Legislature of Great Britain may too soon discover that, instead of the blessings of a well digested system of government, they have subjected this unfortunate Province to new miseries, without leaving them that resource which they now have in the more than parental protection of Great Britain.

We have forborne observing upon the increase of expence which the proposed division must occasion in point of civil establishment, because we are convinced that, if the claims of justice do not prevail, those of economy are not to be relied on. We have likewise refrained from urging those objections to the measure which might be drawn from the probability of its dwindling those who might contribute to our commerce and navigation into a mere yeomanry, anxious but  
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to provide for their daily wants, and wholly indifferent to the concerns or welfare of the empire :—considerations important in themselves, but merely secondary in the view which we have taken of the measure through the medium of substantial justice and constitutional policy.

The provisions which the Bill proceeds to make for the establishment of a Legislative Council and an House of Assembly for each of the proposed Provinces, next challenge consideration. The Legislative Council for the Upper Province is proposed to consist of at least seven persons; and the Legislative Council for the Lower, of at least fifteen: which persons are to hold their seats either for life, or in right of hereditary honours to be conferred by His Majesty.

The creation of ranks may be necessary; and the rendering such distinction hereditary, may under some circumstances be

wise and salutary. But we shall refrain from discussing the abstract question, as its discussion is not necessary, in order to decide upon the propriety of introducing hereditary honours into the Province of Quebec: for nothing seems to be more evident than, as the principal advantage to be derived from our connection with that Province must be derived through the medium of commerce, that every institution which diverts from the pursuits of commerce must lessen the probability or quantity of advantage; and that the introduction of hereditary distinctions into a country purely commercial has a tendency to encourage the views of ambition at the expence of useful industry, will hardly be denied. But if it should be denied, the history of Canada, whilst a part of the French empire, might bear out our assertion that it has such tendency.

We are at a loss to conjecture what ex-

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perience or motive has suggested this experiment; for an experiment it certainly is. If it be said that an hereditary aristocracy is a distinguishing feature of the British constitution, let it be recollected that there are in Great Britain persons of sufficient wealth, on whom such honours may be conferred without drawing upon the exertions of industry. It is also observable, that the proposed institution differs from a regular hereditary aristocracy by letting into the Council an indefinite number of persons whose seats are not hereditary. This is a source of considerable influence, and can hardly be considered as a politic measure when the establishment of a free constitution is the object.

We will now proceed to the mode in which the Bill prescribes the Houses of Assembly to be constituted; always bearing in mind that a free constitution is the proposed object of the Bill.



The Bill authorizes the Governor of each of the provinces respectively, by proclamation, to divide the Province into districts, or counties, or circles, and towns or townships; and to declare and appoint the number of representatives to be chosen by each of such districts, or counties, or circles, and towns or townships respectively.

This is indeed an important trust; and nothing but the most urgent necessity can, in our opinion, justify the delegation of it. But we deny that such necessity exists: for surely the Parliament of Great Britain might enact, that every county and town should send a certain number of members to the Assembly; and it would not be a very difficult measure to appoint Commissioners for the purpose of planning a division of the Province, and to require that such plan of division should be submitted to the ratification of Parliament. But the Bill, not content with

having armed the Governor with these powers, proceeds to invest him with that of appointing from time to time proper persons to execute the office of returning officer in each of the said districts and towns. We do not recollect that this power makes a part of His Majesty's *prerogative*; and we do not feel the claims of *any Governor to superior confidence*.

The words *from time to time* may however have been inadvertently inserted; and as their being expunged will do away the objection, we shall dwell no longer upon it. The power by which the Governor may appoint the *place* of meeting of the Legislature likewise merits consideration. It certainly does not appear absolutely necessary to any good purpose; and it is a confidence which in its abuse may be applied to many bad purposes. It enables him to harraß the members without serving the State; and

to subject public business to many impediments, which a fixed place of meeting would effectually prevent. To appoint the place of their first meeting is necessary; and to leave it to the Legislature itself to determine upon the most convenient place to meet in future cannot, we submit, be reasonably objected to.

The principle upon which every well digested system of popular representation proceeds is, that, as every individual is subject to the laws, he ought, in some mode or other, to be assenting to their wisdom and propriety. That system of representation is therefore the most perfect, which lets in the greatest number of electors; and if, for public convenience or policy, the exclusion of any men or set of men be necessary, such exclusion, though it be sanctioned by such considerations, must however be considered as a departure from that principle, which  
would

would in its fair operation comprehend all. Few subjects have been more fully discussed than this which respects the representation of a free people; and there are few upon which the best informed and most enlightened part of society are more divided. It is not our intention to investigate the arguments by which this contrariety of opinion has been maintained; conceiving it to be sufficient for our present purpose that both sides agree in this point, that no individual ought to be unnecessarily excluded from a voice in the choice of a representative.

But every qualification which is higher than the circumstances of the country render necessary, operates an unnecessary exclusion: and we submit, that the laws of this country, where money is more plentiful, considering a freehold of forty shillings per annum a sufficient qualification, do strongly decide against the clause of this Bill which  
requires

requires a freehold of five pounds per annum as a qualification in a country where money is less plentiful, the price of labour much higher, and the best directed industry less productive.

By the Petitions presented to Parliament, the uncertain and distracted state of the Law is pointed out to its attention, as one of the principal causes of the various grievances which have oppressed the Province: and with that spirit of moderation which has throughout distinguished the conduct of the Petitioners, they have contented themselves with soliciting as a *gift* that, which every dictate of sound policy and every principle of substantial justice would have extended to them as a *right*. We refer to such parts of the Law of England as are applicable to the circumstances, and necessary to the interests, of the Province.

Groaning under that species of oppression



sion which is the inevitable consequence of uncertain Laws (*et miserrima est servitus ubi Lex est vaga et incognita*), and anxiously casting about for a system founded on principle, and directed to the ends of public and private security, they felt the preference due to the Law of England ; a system the most perfect that ever graced and protected society : they approached the Parliament of Great Britain with humility, communicated their sufferings, and distinctly specified the means of relieving them. That the British Parliament should be insensible of their sufferings, or indifferent to their continuance, is one of those apprehensions which no mind conversant with the principles by which the opinions and conduct of Parliament are regulated can entertain. That the Petitioners should look forward with confidence to that period when their complaints were to be discussed, as to the period when  
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their sufferings would end, their wants be supplied, and their various interests protected and secured, was a confidence justified by that liberality which inclines men possessed of the most honourable privileges in trust for the most important purposes, to avail themselves of the first moment that offers, to give to those privileges their destined operation and effect. The Petitioners considering the interests of Great Britain in a material degree connected with their own, and well assured that every advantage to be derived to Great Britain from its possession of the Province must be derived through the medium of commerce, to the interests of which confidence was essential; and being convinced, by fatal experience, that certain and approved laws were the only means by which confidence could be inspired and justified, they prayed that the Commercial Law of England might be

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declared

declared to be the Commercial Law of the Province. If the measure be practicable, the request is certainly not unreasonable; and that it be practicable cannot admit of a doubt.

We are aware that it will be objected, that though the Petition does distinctly pray for the introduction of the Commercial Law of England; yet that there are persons well acquainted with the real wish and interests of the Province, who are not prepared to define what is intended by the Commercial Law; and who, when told it comprehends the Bankrupt Law, the Law of Insurance, and many other branches, will candidly admit that the Province does not wish for those branches of it.

That Merchants, though most interested in the Commercial Law, should not be prepared to define its extent, or to enumerate its particulars; that, feeling the security  
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which flows from it, they should not have examined its sources, or followed the various streams which fall into or branch out of it, is in our apprehension by no means extraordinary. The fact would perhaps have rendered a minute investigation of the state and wants of the Province more particularly necessary ; but it certainly could never furnish an apology for desisting from all investigation, and foregoing the opportunity of giving to the Commerce of the Province those additional securities of which its condition and circumstances would allow. If we are correct in these sentiments, one of these consequences must follow : either that the condition and circumstances of the Province do not demand or allow of *any* alteration in its Laws ; or that the Bill does make *every* alteration that the condition and circumstances of the Province demand and allow of ; or that the

Bill calls upon the British Parliament to forego the opportunity of giving such additional securities to the Commerce of the Province, as the condition and circumstances of the Province demand and allow of. The clause of the Bill is as follows : “ And be it  
 “ further enacted by the authority aforesaid,  
 “ That all Laws, Statutes, and Ordinances  
 “ now in force in the said Provinces, or  
 “ either of them, or in any part thereof  
 “ respectively, shall remain and continue  
 “ to be of the *same* force, authority, and  
 “ effect, in each of the said Provinces re-  
 “ spectively, *as before the passing of this Act*,  
 “ except in so far as the same are expressly  
 “ repealed or varied by this Act ; or in so  
 “ far as the same shall or may hereafter, by  
 “ virtue of or under the authority of this  
 “ Act, be *repealed* or varied, by His Ma-  
 “ jesty, his heirs or successors, by and with  
 “ the advice and consent of the Legislative  
 “ Councils



“ Councils and Assemblies of the said Pro-  
 “ vinces respectively ; or in so far as the  
 “ same may be *repealed* or varied by such  
 “ temporary Laws and Ordinances as may  
 “ be made in the manner hereinafter speci-  
 “ fied.”

The *Merchant* may be unable to define what is the *Commercial Law of England* ; but are the *Framers of this Bill* prepared to define what is the *Law of Canada* ? Are the Lawyers of the Province agreed upon the subject ? Are the Judges of the Province, who are sworn to administer the Laws, agreed upon the subject ? Is the Court of the last resort prepared with any opinion upon the subject ? If information can be obtained from either of these sources, such information ought to be produced ; and those Laws which have hitherto been charged with uncertainty may be found to have incurred the imputation by the indolence

lence of those whose profession required the study of them, or by the depravity of those whose judicial stations required the correct, faithful, and uniform administration of them. But until that information be produced, we shall not feel ourselves justified in charging on the Judge the censure which is now fastened on the Law.

But it may be expected that we should, from motives of candor, admit that this complicated mass, which is termed the Law of Canada, was not forced upon the Province by the exertions of power, but was rather conceded to it as the professed object of its wish. It is certainly true, that from the year 1764 to 1774 the Laws of England were in force in the Province of Quebec, in consequence of His Majesty's Proclamation. And if ever a measure of pure benevolence was peculiarly justified by the dictates of sound policy, it was upon this occasion.

occasion. Justice was administered, with few exceptions, by the approved Laws of England ; the interests of Commerce were protected, and the rights of Liberty every where secure. The Judges indeed were dependant ; but they had few temptations to corruption, and no apology for ignorance. The Law was certain ; and they were interested in their decisions being correct and uniform.

That under such a system of Law discontent should arise, is hardly credible. We must however admit that some of the new subjects did complain. The sudden rays of Liberty were too powerful for those who had lived in the gloom of Tyranny. The transition was too sudden for the feelings of some, and fatal to the interests of others. The Seigneur demanded the restitution of his power ; and, wonderful indeed ! the Vassal demanded his chains.

“ Restore us the Laws of Canada. The  
 “ Trial by Jury we don’t value : the Habeas  
 “ Corpus we don’t want. We have been  
 “ trained to obedience, and never felt a  
 “ claim to protection.” This may be sup-  
 posed to have been the language of those  
 few, whose Petitions supplanted the Law of  
 England. But from the period when the  
 Law of Canada was, in compliance with  
 their wish, restored, what has been their  
 state? We will not assert it to have been  
 wretchedness ; but we may safely deny it to  
 have been that of perfect liberty. The lan-  
 guage of their present Petitions discovers a  
 very different spirit : and though it were  
 possible to draw an objection to the present  
 claims of the Province from the circum-  
 stance of a few individuals retaining their  
 former prejudices, Parliament would pro-  
 bably feel itself bound to examine the  
 grounds of those prejudices before it pro-  
 ceeded

ceeded upon them : but whatever representations may have gone forth, we believe it will be found to be the wish of every part of the Province, that so much of the Commercial Law of England as will apply to the condition and circumstances of the Province, should be substituted for the Law of Canada, which, in such of its provisions as are intelligible, is grossly inapplicable and most seriously mischievous to its commercial interests. What part of the Commercial Law of England is applicable, may by some be considered as a question of difficulty ; to us it seems to involve little or none : but if it should, the difficulty is easily surmounted. Give them the whole, and leave it to themselves to alter or repeal such parts as in their present state do not apply ; by which they will have a system clear in its provisions, and defined in its extent ; and which may serve them as a



basis for future legislation ; instead of that indefinite system called the Laws of Canada.

But not to dwell longer upon this objection, we shall proceed to our next with repeating what we have endeavoured to impress as a truly important consideration : That it is the duty of the British Parliament to secure to this Province as large a portion of happiness as its condition and circumstances will allow of ; and that they ought not to entrust to others the discharge of any part of a duty which they can themselves as well, if not more effectually, discharge.

It has been stated in very explicit terms that this Bill does secure to the Province the full benefit of the *Habeas Corpus* and *Trial by Jury* ; and we are convinced that the intention of those who framed the Bill is, that it should secure to the Province these inestimable objects. But as the Ha-  
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beas Corpus and Trial by Jury are the most impregnable bulwarks that human wisdom ever erected for the protection of civil and political liberty, we are persuaded that we shall not be thought unreasonable in expecting to find in a bill like the present, the most distinct provision for their establishment. We submit however that the clause which is said to comprehend these objects does not distinctly secure them as *fundamental rights*.

The Habeas Corpus is now in force in the Province by virtue of a Perpetual Ordinance ; and the Bill confirms such Ordinance : but, does it enact that such Ordinance shall never be *repealed*? No.—On the contrary, it subjects that and every other Ordinance to be *repealed* by the consent of the Governor and Legislative Council, and Assembly. *The Petitioners wish the Bill to protect them against themselves,*

*and to have the Habeas Corpus placed beyond the reach of even their own Legislature, for every other purpose but that of its occasional suspension.* But, is it only by the Legislature constituted by this Bill that the Habeas Corpus can be *repealed*? No; it is, together with the other Ordinances now in force, liable to be *repealed* by any temporary Law or Ordinance which may be made by the Governor and Legislative Council after the commencement of the Act, and previous to the meeting of the new Legislature. But it will be observed that such temporary Law or Ordinance will be in force only six months after the meeting of the new Legislature.

We are aware that the repeal of a repealing Statute revives the first Statute. The rule is founded on a fair inference of intention; and its principle may perhaps extend to the case of a temporary law expiring: but we

submit that Parliament ought to be well assured that it does extend to such case, before they give powers which may defeat their intention to secure this invaluable protection to the Province.

We have said that the principle of the above Rule may perhaps extend to the case of a Temporary Ordinance: we beg however to observe that, if it does, the term *suspend* is more appropriate than *repeal*.

The Trial by Jury is now in force by virtue of a merely *Temporary* Ordinance; and we do submit that the language of the clause is not sufficiently indicative of the intention to make it perpetual.

The phrase which raises our difficulty is, "*same* force, authority, and effect, as before the passing of this Act." The sentence is clearly relative, and refers to perpetual and Temporary Laws, in force before the passing of this Act. Omit the word "*same*," and  
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the construction is clear, that Parliament intended all Laws then in force should continue in force until a certain period. But, supposing Parliament to have intended all Temporary Laws to expire at the time prescribed by the Ordinance introducing such Laws; will not the insertion of the word "*same*" carry the mind a considerable way towards the discovery of such intention? Where however there is no difference in opinion as to the intent, it were unbecoming us to do more than submit our doubt as to the sufficiency of the terms employed to denote it. But, supposing the expression of the bill to be sufficiently strong to perpetuate this Ordinance, it is material to observe that the Ordinance is not considered to allow of the Trial by Jury in all cases whatever; but merely in those which it specifies: whereas the Petition prays, "that Optional Juries may be granted on *all* trials in Courts of

" Original

“ Original Jurisdiction, &c.” It is obvious that the objections which we have already stated with respect to the Habeas Corpus being repealed, do likewise apply to the Trial by Jury in those cases in which the Province wishes such form of trial to be *a fundamental, sacred, constitutional and indefeasible right.*

The next observation that occurs on this Bill is one to which it will be sufficient merely to glance in order to secure to it full effect. Whence the necessity of two Courts of Appeal in this country? Why must the suitor, harassed by all those delays and expences which are incident to litigation, be subjected to the necessity of appealing to His Majesty in Council, before he appeals to His Majesty in his Parliament. The multiplying of Courts of Appeal will require a strong necessity for its justification; it arms the vexatious with new means of vexation,  
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by subjecting the injured and oppressed to new obstacles in the pursuit of justice.

When our attention was first called to this Bill, we found some difficulty in forming a judgment on that part of it which respects a provision for the Protestant Clergy. The principle of the measure was too just to allow of any objection. That the establishing of an enlightened Clergy in the Province would materially contribute to its real interests, appeared to us an expectation which the Authors of the Bill were well entitled to indulge: and that a decent provision is absolutely necessary to induce an enlightened Clergy to settle in the Province, is a position which cannot be disputed. But whether the provision proposed by the Bill is more than sufficient for such purpose, or whether the means of producing it are the most eligible, are points well deserving consideration: for one seventh of the land  
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of a country to us seems a very large proportion. It may indeed be less in point of benefit to the Clergy than one tenth of the produce; but it does appear to be more than sound policy would allow to be thrown into mortmain. The present uncultivated state of the Province of Canada may be a reason for not considering the measure in that point of view, from the extreme remoteness of the period when the inconvenience of lands being in mortmain is likely to be felt in so extended a Province: we shall therefore not enter more particularly into this consideration; but submit, that whatever provision be made for the Clergy, or in whatever manner that provision may be raised, the mode of distribution ought to be weighed with attention, and prescribed with exactness. Whereas the Bill seems to be satisfied that the fund is to be raised; and leaves it to some future arrangement to regulate



its distribution. His Majesty is indeed empowered to authorise the Governor to erect Rectories, &c. and to endow them with these lands; but how are the rents and profits to be applied in the mean time? if they are to accumulate? The question is, How is the accumulation to be disposed of? If it is to make a part of the fund constituted of the tithes now paid by Protestants, and which are intended to encourage the Protestant Religion, and to support the Protestant Clergy, the question recurs—In what proportions, or by what rule, is that fund to be distributed? If at the discretion of the Governor, we much apprehend that a support to be drawn from such discretion will not operate as a very powerful temptation to an enlightened Protestant Clergy. We did expect that the Bill, contemplating the great extent of the Province, would exempt lands and persons from the payment of tithes,  
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whose distant situation may not allow of their receiving that benefit in respect of which they can be reasonably demanded. We did likewise hope that lands only would have been subjected to the payment of tithes, lest personal property being liable might discourage that kind of industry which best improves it. But the Bill makes no such distinction—perhaps from the persuasion that the necessary provisions will come much better from the Provincial Legislature than from the British Parliament.

As there is no trust which man can delegate of equal magnitude with that which is conferred for the purpose of legislation, there can be none which in its exercise demands so scrupulous an adherence to the real interests of those from whom it is derived. To search for that information which is necessary to a correct knowledge of the wants of the constitu-

ent, and to call forth those resources which are best calculated to remove or alleviate those wants, is a duty so inherent in the character of a legislator, that we may venture to affirm, not even the consent of the constituent can release from its performance. That the British Legislature, feeling a strong sense of this duty, and feeling at the same moment the extreme difficulty of discharging it, should cheerfully yield to the claims of the Province of Quebec, to be placed in the condition of governing themselves, is a measure which does equal honour to their sense of justice and scruples of integrity: but in divesting themselves of their fairest privileges, they will not mark more anxiety to throw a burthen off themselves than to confer a blessing on their fellow subjects; they will indulge the workings of an anxious regard for the Province;

Province; and having invested them with all the necessary powers to improve their happiness, they will retire with the enviable reflection, that they have not put that happiness in hazard by claims which by their nature may alarm, or by terms which by their ambiguity may mislead. We have been drawn into this train of reflection by the Bill not having, in our opinion, with sufficient clearness described the quantity of power which it proposes to reserve to the British Legislature. That some reservation of power is necessary will not be disputed by any man, who feels the strict connection of interests between this country and that; for whilst Canada is a part of the British Empire, we scruple not to affirm, that it ought to confide in the wisdom of the British Legislature in framing provisions, or deciding upon measures necessary to the general welfare.

welfare. And for such purpose, the *external* commerce and navigation of the Province ought to be subject to the control of British Laws : but we are not aware that the same principle of common benefit requires these powers to be extended to the *internal* commerce of the Province. There may be reasons to favour such a measure ; to us they have not occurred : but if there be no reason that can justify such measure, we submit that the species of commerce so to be affected ought to be distinctly stated to be the *external* commerce of the Province.

The Bill, adopting the spirit of the Act passed in the 18th year of his present Majesty, enacted, that “ the produce of all duties, imposed by the British Parliament, shall at all times hereafter be applied to and for the use of *each of the said Provinces respectively*, and in such man-



“ ner only as shall be directed by any law  
 “ or laws which may be made by his Ma-  
 “ jesty, with the advice and consent of the  
 “ Legislative Council and Assembly of  
 “ such Province.”

Construing this provision by the provision of the 18th of his present Majesty, we are inclined to apprehend that the Bill not referring to the situation of the proposed Provinces would, by this provision, sow the seeds of dissension between the Provinces. By the Act of the year 1778, “ the duties are to be always paid, and “ applied to and for the use of the Colony, “ &c. in which the same shall be levied.” But by this Bill all these duties must, from the plan of division, be levied in the *Lower* Province; and if they are to be applied to the *use* of the Lower Province *exclusively*, it will follow, that, though the trade and industry of the *Upper* Province

vince will materially contribute to these duties, yet the Upper Province will derive no benefit from them.—This seems to be an additional objection to the plan of division of the Province.

The last observation which we shall state arises upon the clause which determines the effect of the Temporary Laws and Ordinances; or, in other words, such Laws and Ordinances as may be made during such interval as may happen between the commencement of the Act in the said Province and the first meeting of the Legislative Council and Assembly: but as the Act may perhaps not commence till the 31st of December 1791, it may be material to determine what shall be the effect of Laws and Ordinances that may be made between the passing of this Act and the commencement of it in the Province.

We

We have now submitted to consideration the several observations which have occurred to us upon this Bill : we trust that they are not frivolous in themselves, nor harsh in their communication. We feel the difficulties which must obstruct the framing of a Constitution, and we much lament that these difficulties have been increased by the plan of dividing the Province ; a measure which appears to us to be at once unwise, impolitic, dangerous, and expensive ; and thinking that a more close attention to the objects stated in the Petition would have answered every purpose.

A House of Assembly, for the purpose of representing the wants, and furthering the interests of the Province :

The Habeas Corpus and Trial by Jury to guard their liberties ; certain Laws to protect their property ; and independent

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Judges

Judges to administer and protect the Laws,—were the principal objects that they solicited by their petitions. Of these objects which is exceptionable?

Do they not severally contribute, and is not their union essential to the full enjoyment of those securities which flow from our own Constitution?—If such blessings can be conferred on a British Province, alarming indeed must be the sophistry which can persuade the British Legislature to withhold from British subjects, though resident in a remote corner of the British Empire, the full enjoyment of British Rights.



F I N I S.